

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 499

FINAL READING

Introduced by Erdman, 47; Baker, 44; Dierks, 40; Foley, 29;
Smith, 48; Tyson, 19

Read first time January 11, 2001

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to motor vehicles; to amend sections 60-4,132,
2 60-4,162, 60-1306, and 75-369.03, Reissue Revised
3 Statutes of Nebraska, and sections 60-4,168, 75-363, and
4 75-364, Revised Statutes Supplement, 2001; to change
5 provisions relating to intent, employers, and
6 disqualification of commercial motor vehicle drivers; to
7 change provisions relating to motor carrier safety; to
8 adopt certain portions of the federal Motor Carrier
9 Safety Regulations and the federal Hazardous Material
10 Regulations; to repeal provisions regarding names
11 displayed on commercial trucks and truck-tractors; to
12 provide and eliminate penalties; to harmonize provisions;
13 to repeal the original sections; and to outright repeal
14 sections 60-305.12 and 60-305.13, Reissue Revised
15 Statutes of Nebraska.

LB 499

LB 499

1 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 60-4,132, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 60-4,132. The purposes of sections 60-4,137 to 60-4,172
4 are to implement the requirements mandated by the Commercial Motor
5 Vehicle Safety Act of 1986, Public Law 99-570, Title XII, and
6 federal regulations as they existed on January 1, 2002, and to
7 reduce or prevent commercial motor vehicle accidents, fatalities,
8 and injuries by: (1) Permitting drivers to hold only one operator's
9 license; (2) disqualifying drivers for specified offenses and
10 serious traffic violations; and (3) strengthening licensing and
11 testing standards.

12 Sec. 2. Section 60-4,162, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 60-4,162. (1) Each employer shall require prospective
15 applicants for employment as a driver of a commercial motor vehicle
16 to provide the information required by section 60-4,161.

17 (2) An employer shall not knowingly allow, permit, or
18 authorize a person to operate a commercial motor vehicle in the
19 United States during any period in which:

20 (a) The person's commercial driver's license is
21 suspended, revoked, or canceled by any state;

22 (b) The person has lost the privilege to drive a
23 commercial motor vehicle in any state;

24 (c) The person has been disqualified from driving a
25 commercial motor vehicle; or

26 (d) The person has more than one operator's license.

27 (3) No employer may knowingly allow, permit, or authorize
28 a person to operate a commercial motor vehicle in the United States

1 in violation of a federal, state, or local law or regulation
2 pertaining to highway-rail grade crossings.

3 (4) Any employer who violates this section shall, upon
4 conviction, be guilty of a Class III misdemeanor.

5 Sec. 3. Section 60-4,168, Revised Statutes Supplement,
6 2001, is amended to read:

7 60-4,168. (1) Except as provided in subsection (2) of
8 this section, a person shall be disqualified from driving a
9 commercial motor vehicle for one year:

10 (a) Upon his or her first conviction, after April 1,
11 1992, in this or any other state for:

12 (i) Driving a commercial motor vehicle while under the
13 influence of alcohol or a controlled substance;

14 (ii) Leaving the scene of an accident involving a
15 commercial motor vehicle driven by the person; or

16 (iii) Using a commercial motor vehicle in the commission
17 of a felony; or

18 (b) Upon a first administrative determination, after
19 April 1, 1992, that such person while driving a commercial motor
20 vehicle in this or any other state was requested to submit to a
21 chemical test or tests of his or her blood, breath, or urine by a
22 law enforcement officer and refused or had a concentration of
23 four-hundredths of one gram or more by weight of alcohol per one
24 hundred milliliters of his or her blood or four-hundredths of one
25 gram or more by weight of alcohol per two hundred ten liters of his
26 or her breath.

27 (2) If any of the offenses described in this section
28 occurred while the person was transporting hazardous material in a

1 commercial motor vehicle which required placarding pursuant to
2 section 75-364, the person shall, upon conviction or administrative
3 determination, be disqualified from driving a commercial motor
4 vehicle for three years.

5 (3) A person shall be disqualified from driving a
6 commercial motor vehicle for life if, after April 1, 1992, he or
7 she is convicted of or administratively determined to have
8 committed a second or subsequent violation of any of the offenses
9 described in subsection (1) of this section or any combination of
10 those offenses arising from two or more separate incidents.

11 (4) A person shall be disqualified from driving a
12 commercial motor vehicle for a period of not less than sixty days
13 if he or she is convicted in this or any other state of two serious
14 traffic violations or not less than one hundred twenty days if he
15 or she is convicted in this or any other state of three serious
16 traffic violations, arising from separate incidents occurring
17 within a three-year period.

18 (5) (a) A person who is convicted of operating a
19 commercial motor vehicle in violation of a federal, state, or local
20 law or regulation pertaining to one of the following six offenses
21 at a highway-rail grade crossing shall be disqualified for the
22 period of time specified in subdivision (5) (b) of this section:

23 (i) For drivers who are not required to always stop,
24 failing to slow down and check that the tracks are clear of an
25 approaching train;

26 (ii) For drivers who are not required to always stop,
27 failing to stop before reaching the crossing, if the tracks are not
28 clear;

1 (iii) For drivers who are always required to stop,
2 failing to stop before driving onto the crossing;

3 (iv) For all drivers, failing to have sufficient space to
4 drive completely through the crossing without stopping;

5 (v) For all drivers, failing to obey a traffic control
6 device or the directions of an enforcement official at the
7 crossing; or

8 (vi) For all drivers, failing to negotiate a crossing
9 because of insufficient undercarriage clearance.

10 (b) (i) A person shall be disqualified for not less than
11 sixty days if the person is convicted of a first violation
12 described in this subsection.

13 (ii) A person shall be disqualified for not less than one
14 hundred twenty days if, during any three-year period, the person is
15 convicted of a second violation described in this subsection in
16 separate incidents.

17 (iii) A person shall be disqualified for not less than
18 one year if, during any three-year period, the person is convicted
19 of a third or subsequent violation described in this subsection in
20 separate incidents.

21 (6) For purposes of this section, conviction shall mean
22 an adjudication of guilt in a court of original jurisdiction, an
23 unvacated forfeiture of bail or collateral deposited to secure the
24 person's appearance in court, a plea of guilty or nolo contendere
25 accepted by the court, a payment of a fine or court costs, or a
26 violation of a condition of release without bail, regardless of
27 whether the penalty is rebated, suspended, or probated.

28 ~~(6)~~ (7) For purposes of this section, serious traffic

1 violation shall mean:

2 (a) Speeding at or in excess of fifteen miles per hour
3 over the legally posted speed limit;

4 (b) Willful reckless driving as described in section
5 60-6,214 or reckless driving as described in section 60-6,213;

6 (c) Improper lane change as described in section
7 60-6,139;

8 (d) Following the vehicle ahead too closely as described
9 in section 60-6,140; and

10 (e) A violation of any law or ordinance related to motor
11 vehicle traffic control, other than parking violations or
12 overweight or vehicle defect violations, arising in connection with
13 an accident or collision resulting in death to any person.

14 Sec. 4. Section 60-1306, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 60-1306. The carrier enforcement officers shall have the
17 power (1) of peace officers solely for the purpose of enforcing the
18 laws relating to the trip permits provided for in section 66-492
19 and the International Fuel Tax Agreement Act and the laws relating
20 to the size, weight, load, and registration of buses, motor trucks,
21 truck-tractors, semitrailers, trailers, and towed vehicles, (2)
22 when in uniform, to require the driver thereof to stop and exhibit
23 his or her operator's license and registration issued for the
24 vehicle and submit to an inspection of such vehicle, the plates,
25 the registration thereon, and licenses and permits required under
26 the motor fuel laws, (3) to make arrests upon view and without
27 warrant for any violation committed in their presence of the
28 provisions of the Motor Vehicle Operator's License Act or of any

1 other law regulating the operation of vehicles or the use of the
2 highways while in the performance of their duties referred to in
3 subdivisions (1) and (2) of this section and of sections ~~60-305.12,~~
4 60-1308, 60-1309, and 75-363 to 75-368, (4) to make arrests upon
5 view and without warrant for any violation committed in their
6 presence which is a misdemeanor or felony under the laws of this
7 state while in the performance of their duties referred to in
8 subdivisions (1) and (2) of this section and of sections ~~60-305.12,~~
9 60-1308, 60-1309, and 75-363 to 75-368, and (5) to make arrests on
10 warrant for any violation which is a misdemeanor or felony under
11 the laws of this state while in the performance of their duties
12 referred to in subdivisions (1) and (2) of this section and of
13 sections ~~60-305.12,~~ 60-1308, 60-1309, and 75-363 to 75-368.

14 Any funds used to arm carrier enforcement officers shall
15 be paid solely from the Carrier Enforcement Cash Fund. The amount
16 of funds shall be determined by the Superintendent of Law
17 Enforcement and Public Safety.

18 Sec. 5. Section 75-363, Revised Statutes Supplement,
19 2001, is amended to read:

20 75-363. (1) The parts of the federal Motor Carrier
21 Safety Regulations, 49 C.F.R., as modified in this section and any
22 other parts referred to by such parts, in existence and effective
23 as of January 1, ~~2001~~ 2002, are adopted as Nebraska law. Except as
24 otherwise provided in this section, the regulations shall be
25 applicable to all carriers, drivers, and vehicles to which the
26 federal regulations apply, to all vehicles of intrastate motor
27 carriers with a gross vehicle weight rating, gross combination
28 weight rating, gross vehicle weight, or gross combination weight

1 over ten thousand pounds, to all vehicles of intrastate motor
2 carriers designed or used to transport more than eight passengers,
3 including the driver, for compensation, or designed or used to
4 transport more than fifteen passengers, including the driver, and
5 not used to transport passengers for compensation, to all
6 intrastate motor carriers in the operation of vehicles with a gross
7 vehicle weight rating, gross combination weight rating, gross
8 vehicle weight, or gross combination weight over ten thousand
9 pounds, to all intrastate motor carriers in the operation of
10 vehicles designed or used to transport more than eight passengers,
11 including the driver, for compensation, or designed or used to
12 transport more than fifteen passengers, including the driver, and
13 not used to transport passengers for compensation, and to all
14 drivers of such vehicles if the drivers are operating a commercial
15 motor vehicle as defined in section 60-465 which requires a
16 commercial driver's license. The Legislature hereby adopts, as
17 modified in this section:

18 (a) Part 382 -- Controlled Substances And Alcohol Use And
19 Testing;

20 (b) Part 385 -- Safety Fitness Procedures;

21 (c) Part 390 -- Federal Motor Carrier Safety Regulations;
22 + General;

23 (d) Part 391 -- Qualifications Of Drivers;

24 (e) Part 392 -- Driving Of Commercial Motor Vehicles;

25 (f) Part 393 -- Parts And Accessories Necessary For Safe
26 ~~Operations~~ Operation;

27 (g) Part 395 -- Hours Of Service Of Drivers;

28 (h) Part 396 -- Inspection, Repair, And Maintenance;

1 (i) Part 397 -- Transportation Of Hazardous Materials;
2 Driving And Parking Rules; and

3 (j) Part 398 -- Transportation Of Migrant Workers.

4 (2) The provisions of subpart E, Physical Qualifications
5 And Examinations, of 49 C.F.R. part 391, Qualifications Of Drivers,
6 shall not apply to any driver subject to this section who: (a)
7 Operates a commercial motor vehicle exclusively in intrastate
8 commerce; and (b) holds, or has held, a commercial driver's license
9 issued by this state prior to July 30, 1996.

10 (3) The regulations adopted in subsection (1) of this
11 section shall not apply to farm trucks registered pursuant to
12 section 60-330 with a gross weight of sixteen tons or less or to
13 fertilizer and agricultural chemical application and distribution
14 equipment transported in units with a capacity of three thousand
15 five hundred gallons or less if the equipment is not required to be
16 placarded pursuant to section 75-364. The following parts and
17 sections of the federal Motor Carrier Safety Regulations shall not
18 apply to drivers of farm trucks registered pursuant to section
19 60-330 and operated solely in intrastate commerce:

20 (a) All of part 391;

21 (b) Section 395.8 of part 395; and

22 (c) Section 396.11 of part 396.

23 (4) For purposes of this section, intrastate motor
24 carriers shall not include any motor carrier or driver excepted
25 from the federal Motor Carrier Safety Regulations by section
26 390.3(f) of part 390 or any nonprofit entity, operating solely in
27 intrastate commerce, organized for the purpose of furnishing
28 electric service.

1 (5) Part 395 -- Hours Of Service Of Drivers shall apply
2 to motor carriers and drivers who engage in intrastate commerce as
3 defined in section 75-302, except that no motor carrier who engages
4 in intrastate commerce shall permit or require any driver used by
5 it to drive nor shall any driver drive:

6 (a) More than twelve hours following eight consecutive
7 hours off duty; or

8 (b) For any period after having been on duty sixteen
9 hours following eight consecutive hours off duty.

10 No motor carrier who engages in intrastate commerce shall
11 permit or require a driver of a commercial motor vehicle,
12 regardless of the number of motor carriers using the driver's
13 services, to drive, nor shall any driver of a commercial motor
14 vehicle drive, for any period after:

15 (i) Having been on duty seventy hours in any seven
16 consecutive days if the employing motor carrier does not operate
17 every day of the week; or

18 (ii) Having been on duty eighty hours in any period of
19 eight consecutive days if the employing motor carrier operates
20 motor vehicles every day of the week.

21 (6) Part 395 -- Hours Of Service Of Drivers, as adopted
22 in subsections (1) and (5) of this section relating to maximum
23 driving and on-duty time for drivers, shall not apply to drivers
24 transporting agricultural commodities or farm supplies for
25 agricultural purposes when the transportation of such commodities
26 or supplies occurs within a one-hundred-air-mile radius of the
27 source of the commodities or the distribution point for the
28 supplies when such transportation occurs during the period

1 beginning on February 15 up to and including December 15 of each
2 calendar year.

3 (7) Section 390.21 of part 390 -- Federal Motor Carrier
4 Safety Regulations; + General, 49 C.F.R. 390.21 -- Marking ~~Of~~
5 ~~Commercial Motor Vehicles~~ of commercial motor vehicles, shall not
6 apply to farm trucks and farm truck-tractors registered pursuant to
7 section 60-330 and operated solely in intrastate commerce.

8 Sec. 6. Section 75-364, Revised Statutes Supplement,
9 2001, is amended to read:

10 75-364. (1) The parts of the federal Hazardous Material
11 Regulations, 49 C.F.R., listed below or any other parts referred to
12 by such parts, in existence and effective as of January 1, ~~2001~~
13 2002, are adopted as part of Nebraska law and, except as provided
14 in subsections (2) and (3) of this section, shall be applicable to
15 all private, common, and contract motor vehicle carriers, drivers
16 of such carriers, and vehicles of such carriers whether engaged in
17 interstate or intrastate commerce:

18 (a) Part 171 -- General Information, Regulations, And
19 Definitions;

20 (b) Part 172 -- Hazardous Materials Table, Special
21 Provisions, Hazardous Materials Communications, Emergency Response
22 Information, and Training Requirements;

23 (c) Part 173 -- Shippers--General Requirements For
24 Shipments And Packagings;

25 (d) Part 177 -- Carriage By Public Highway;

26 (e) Part 178 -- Specifications For Packagings; and

27 (f) Part 180 -- Continuing Qualification And Maintenance
28 Of Packagings.

1 (2) Agricultural operations exceptions:

2 (a) The transportation of an agricultural product other
3 than a Class 2 material (Compressed Gases), over roads, other than
4 the National System of Interstate and Defense Highways, between
5 fields of the same farm, is excepted from subsection (1) of this
6 section when:

7 (i) The agricultural product is transported by a farmer
8 who is an intrastate private motor carrier; and

9 (ii) The movement of the agricultural product conforms to
10 all other laws in effect on or before July 1, 1998, and 49 C.F.R.
11 173.24, 173.24a, and 173.24b;

12 (b) The transportation of an agricultural product to or
13 from a farm, within one hundred fifty miles of the farm, is
14 excepted from the requirements in 49 C.F.R. part 172, subparts G
15 (emergency response information) and H ~~(training requirements)~~
16 (training) when:

17 (i) The agricultural product is transported by a farmer
18 who is an intrastate private motor carrier;

19 (ii) The total amount of agricultural product being
20 transported on a single vehicle does not exceed:

21 (A) Sixteen thousand ninety-four pounds of ammonium
22 nitrate fertilizer properly classed as Division 5.1, PGIII, in a
23 bulk packaging; or

24 (B) Five hundred two gallons for liquids or gases, or
25 five thousand seventy pounds for solids, of any other agricultural
26 product;

27 (iii) The packaging conforms to the requirements of state
28 law and is specifically authorized for transportation of the

1 agricultural product by state law and such state law has been in
2 effect on or before July 1, 1998; and

3 (iv) (A) Each person having any responsibility for
4 transporting the agricultural product or preparing the agricultural
5 product for shipment has been instructed in the applicable
6 requirements of 49 C.F.R. adopted in this section; and

7 (B) Instruction by the Department of Agriculture required
8 pursuant to the Pesticide Act shall be sufficient for instruction
9 under subdivision (2) (b) (iv) (A) of this section, if it has been
10 approved for that purpose by the carrier enforcement division of
11 the Nebraska State Patrol; and

12 (c) Formulated liquid agricultural products in
13 specification packagings of fifty-eight-gallon capacity or less,
14 with closures manifolded to a closed mixing system and equipped
15 with positive dry disconnect devices, may be transported by a
16 private motor carrier between a final distribution point and an
17 ultimate point of application or for loading aboard an airplane for
18 aerial application.

19 (3) Exceptions for nonspecification packagings used in
20 intrastate transportation:

21 (a) Nonspecification bulk packagings: Notwithstanding
22 requirements for specification packagings in 49 C.F.R. part 173,
23 subpart F, and 49 C.F.R. parts 178 and 180, of the hazardous
24 material regulations, a nonspecification bulk packaging may be used
25 for transportation of a hazardous material by an intrastate motor
26 carrier until July 1, 2000, in accordance with subdivision (d) of
27 this subsection;

28 (b) Nonspecification cargo tanks for petroleum products:

1 Notwithstanding requirements for specification packagings in 49
2 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a
3 nonspecification metal tank permanently secured to a transport
4 vehicle and protected against leakage or damage in the event of a
5 turnover, having a capacity of less than three thousand five
6 hundred gallons, may be used by an intrastate motor carrier for
7 transportation of a flammable liquid petroleum product in
8 accordance with subdivision (d) of this subsection;

9 (c) Permanently secured nonbulk tanks for petroleum
10 products: Notwithstanding requirements for specification
11 packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts
12 178 and 180, a nonspecification metal tank permanently secured to a
13 transport vehicle and protected against leakage or damage in the
14 event of a turnover, having a capacity of less than one hundred
15 nineteen gallons, may be used by an intrastate motor carrier for
16 transportation of a flammable liquid petroleum product in
17 accordance with subdivision (d) of this subsection; and

18 (d) Additional requirements: A packaging used pursuant to
19 subdivision (a), (b), or (c) of this subsection must:

20 (i) Be operated by an intrastate motor carrier and in use
21 as a packaging for hazardous material before July 1, 1998;

22 (ii) Be operated in conformance with the requirements of
23 the State of Nebraska;

24 (iii) Be specifically authorized by state law in effect
25 before July 1, 1998, for use as a packaging for the hazardous
26 material being transported and by 49 C.F.R. 173.24, 173.24a, and
27 173.24b;

28 (iv) Be offered for transportation and transported in

1 conformance with all other applicable requirements of the hazardous
2 material regulations;

3 (v) Not be used to transport a flammable cryogenic
4 liquid, hazardous substance, hazardous waste, or marine pollutant;
5 and

6 (vi) On and after July 1, 2000, for a tank authorized
7 under subdivision (b) or (c) of this subsection, conform to all
8 requirements in 49 C.F.R. part 180, except for 49 C.F.R. 180.405(g)
9 of the hazardous material regulations, in the same manner as
10 required for a United States Department of Transportation
11 specification MC306 cargo tank motor vehicle.

12 (4) For purposes of this section:

13 (a) Agricultural product means a hazardous material,
14 other than a hazardous waste, whose end use directly supports the
15 production of an agricultural commodity, including, but not limited
16 to, a fertilizer, pesticide, soil amendment, or fuel. An
17 agricultural product is limited to a material in Class 3 (Flammable
18 Liquids), Class 8 (Corrosives), or Class 9 (Miscellaneous),
19 Division 2.1 (Flammable Gas), Class 2.2 (Nonflammable Gas), Class
20 5.1 (Oxidizers), or Class 6.1 (Poisons), or an ORM-D material
21 (Consumer Commodity);

22 (b) Bulk package means a packaging, including a transport
23 vehicle or freight container, in which hazardous materials are
24 loaded with no other intermediate form of containment and which
25 has:

26 (i) A maximum capacity greater than one hundred nineteen
27 gallons as a receptacle for a liquid;

28 (ii) A maximum net mass greater than eight hundred

1 eighty-two pounds and a maximum capacity greater than one hundred
2 nineteen gallons as a receptacle for a solid; or

3 (iii) A water capacity greater than one thousand pounds
4 as a receptacle for a gas as defined in 49 C.F.R. 173.315;

5 (c) Farmer means a person engaged in the production or
6 raising of crops, poultry, or livestock; and

7 (d) Private motor carrier means a person or persons
8 engaged in the transportation of persons or product while in
9 commerce, but not for hire.

10 Sec. 7. Section 75-369.03, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 75-369.03. The Superintendent of Law Enforcement and
13 Public Safety may issue an order imposing a civil penalty against
14 an interstate motor carrier for a violation of sections 75-348 to
15 75-358 or against an intrastate motor carrier for violation of
16 section 75-363 or 75-364 based upon an inspection conducted
17 pursuant to section 75-366 in an amount which shall not exceed five
18 hundred dollars for any single violation in any proceeding or
19 series of related proceedings against any person, motor carrier,
20 common carrier, contract carrier, exempt carrier, or private
21 carrier as defined in 49 C.F.R. part 390.5 of the federal Motor
22 Carrier Safety Regulations as adopted in section 75-363. The
23 superintendent shall issue an order imposing a civil penalty in an
24 amount not to exceed ten thousand dollars against an interstate
25 motor carrier for a violation of subsection (3) of section 60-4,162
26 based upon a conviction of such a violation. Upon the discovery of
27 any violation by an interstate motor carrier of section 75-307,
28 75-352, 75-363, or 75-364 based upon an inspection conducted

1 pursuant to section 75-366, the superintendent shall immediately
2 refer such violation to the appropriate federal agency for
3 disposition, and upon the discovery of any violation by an
4 intrastate motor carrier of section 75-307 based upon such
5 inspection, the superintendent shall refer such violation to the
6 Public Service Commission for disposition.

7 Sec. 8. Original sections 60-4,132, 60-4,162, 60-1306,
8 and 75-369.03, Reissue Revised Statutes of Nebraska, and sections
9 60-4,168, 75-363, and 75-364, Revised Statutes Supplement, 2001,
10 are repealed.

11 Sec. 9. The following sections are outright repealed:
12 Sections 60-305.12 and 60-305.13, Reissue Revised Statutes of
13 Nebraska.